



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA-R10-UST-2011-0896; FRL 9640-1]

Idaho: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final determination

SUMMARY: The State of Idaho has applied for final approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed the State of Idaho's application and has made a final determination that the State of Idaho's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Idaho to operate its underground storage tank program for petroleum and hazardous substances.

EFFECTIVE DATE: Final approval for the State of Idaho shall be effective on
[INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT: Erik Sirs, U. S. Environmental
Protection Agency, Region 10, 1435 North Orchard, Boise, ID 83706, phone number:
(208) 378-5762, email: sirs.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve underground storage tank programs to operate in the State in lieu of the federal underground storage tank (UST) program. To qualify for final approval, a state's program must be "no less stringent" than the federal program in all eight elements set forth at section 9004(a) (1) through (7) and (9) of RCRA, 42 U.S.C. 6991c(a) (1) through (7) and (9); include the notification requirements of RCRA section 9004(a)(8) and provide for adequate enforcement of compliance with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)). Note that the Energy Policy Act of 2005 added state-specific operator training requirements as a state program approval element in section 9004(a)(9). Although, EPA has not yet established performance criteria in 40 CFR Part 281 for making a no-less-stringent determination for the operator training element, EPA finds Idaho's operator training requirements to be

consistent with Operator Training Grant Guidelines issued by EPA in 2007 and approves Idaho's operator training requirements in today's approval. Also, note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

On July 21, 2010, the State of Idaho submitted an official application to obtain final program approval to administer the underground storage tank program for petroleum and hazardous substances. On December 8, 2011, EPA published a tentative determination announcing its intent to approve the State of Idaho's program. Further background on the tentative decision to grant approval appears in the Federal Register at 76 FR 76684 (December 8, 2011).

Along with the tentative determination, EPA announced the availability of the application for public review and comment and the date of a public hearing on the application. EPA advertised and held a public hearing on December 19, 2011. No comments were received at the public hearing. No public comments were received regarding EPA's tentative approval of Idaho's underground storage tank program.

II. Final Decision

I conclude that the State of Idaho's application for program approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA and 40 CFR Part 281. Accordingly, Idaho is granted final approval to operate its underground storage tank program for petroleum and hazardous substances in lieu of the federal underground storage tank program. Idaho has primary enforcement responsibility for petroleum and hazardous underground storage tanks, although EPA retains the right to conduct enforcement actions for all regulated underground storage tanks under section 9006 of RCRA. This approval is subject to the terms and conditions set forth in the State's application for approval (including, but not limited to, the Memorandum of Agreement) and in the December 8, 2011 Federal Register Idaho: Tentative Approval of State Underground Storage Tank Program. This final determination to approve the Idaho program applies to all areas within the State except for land in Indian Country. This includes all lands within the exterior boundaries of the Shoshone-Bannock Tribes (Fort Hall Reservation), Shoshone-Paiute Tribe (Duck Valley Reservation), Nez Perce Reservation, Coeur d'Alene Reservation, Kootenai Reservation; any land held in trust by the United States for an Indian tribe, and any other lands that are Indian Country within the meaning of 18 U.S.C. 1151.

III. Statutory and Executive Order (EO) Review

This rule only applies to Idaho's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from its review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR Part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. I certify that this rule will not have a significant economic impact on a substantial number of small entities because the rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

D. Unfunded Mandates Reform Act

This rule does not have any impacts as described in the Unfunded Mandates Reform Act because this rule codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law. It does not contain any unfunded mandates or significantly or uniquely effects small governments.

E. Executive Order 13132: Federalism

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule authorizes pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA

directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This rule does not affect the level of protection provided to human health or the environment because this rule authorizes pre-existing State rules which are no less stringent than existing Federal requirements.

K. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the

Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, administrative practice and procedure, hazardous materials, state program approval, and underground storage tanks.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6991c.

Dated: February 14, 2012

Signed: Dennis J. McLerran

Regional Administrator

Region 10

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